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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 562/2013

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	J.K.
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	29 September 2013 (initial submission)
Date of present decision:	23 November 2015
Subject matter:	Extradition to Uganda
Substantive issue:	Risk of torture upon return to country of origin
Procedural issue:	Exhaustion of domestic remedies; lack of substantiation
Article of the Convention:	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 562/2013*

Submitted by:	J.K.
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	29 September 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2015,

Having concluded its consideration of complaint No. 562/2013, submitted to it by J.K. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is J.K., a national of Uganda born on 1 August 1979 and residing in Canada. He is not represented by counsel. He claims that his extradition to Uganda would constitute a violation by Canada of article 3 of the Convention. The Convention entered into force for Canada on 24 June 1987.

1.2 On 2 October 2013, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to extradite the author to Uganda while the complaint was being considered.

Facts as presented by the complainant

2.1 Since he was a teenager, the complainant has known that he is gay. In 2004, his parents forced him to marry a woman in order to dispel the rumours that he was gay. The complainant states that he did not wish to be in a relationship with a woman, and that the marriage therefore lasted only three years.

2.2 After separating from his wife, the complainant was taken to a meeting of the Gay and Lesbian Association by one of its members, R.M. He joined the Association in October

* The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

2007.[1] The Association had about 30 members and met every three days to provide support to the members and to carry out the Association's objectives, including raising awareness among the Ugandan public about human rights and strengthening the organized efforts of the lesbian, gay, bisexual and transgender community in Uganda.[2]

2.3 The complainant states that in August 2007, while participating in a public gay rights demonstration near the Parliament building in Kampala, riot police arrested and handcuffed him, beating and repeatedly kicking him. He was then put in a truck and taken to a dark interrogation room. His hands were tied behind his back and the police began to torture him with a machine that applied extreme pressure to his body, causing asphyxiation and severe pain. The complainant was asked who had organized the demonstration and how it had been planned. The complainant was kept confined in a room for three days without food or water and was regularly beaten by the police. He was told that he was promoting bad morals in Ugandan society. On 24 August 2007, the complainant was put in the trunk of a car and abandoned in the middle of the night on the Kampala Northern Bypass.[3] He was quite weak, could barely walk and could not see. With R.M.'s help, he sought medical treatment and was provided with a medical certificate.[4]

2.4 The complainant states that thereafter, he began to receive threats and threatening e-mails from strangers,[5] and that he and his family were subjected to discrimination by their neighbours. He became very fearful and life became hard for him and his family in Uganda. While returning home one day, he was again arrested by men dressed in plain clothes, in a place called Mulago. The complainant submits that a spy[6] within the Gay and Lesbian Association denounced him to the police and had him arrested. The police arrested him, interrogated him and charged him with the crime of recruiting children by raiding schools and promoting homosexuality. He was released, but the police officers told him that he would be continuously watched, and that he would be killed if he continued his activities with the Association. The complainant notes that he is a gay rights activist and is wanted by government security forces because they believe he is the leader in Uganda of a group called Rainbow. The complainant states that he is affiliated with Rainbow in Canada, but not in Uganda, and that he has he never been one of the group's leaders.[7]

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[1] The complainant provides a copy of his Gay and Lesbian Association membership card. He also provides a letter from R.M., dated 10 October 2012, stating that the complainant was a loyal member of the Association and fled Uganda out of fear for his life.

[2] The complainant states that during the meetings, members discussed problems they were encountering, such as discrimination, torture, HIV/AIDS in the lesbian, gay, bisexual and transgender community, equality for gays, and the struggle to make the Government of Uganda recognize lesbian, gay, bisexual and transgender rights and same-sex marriage.

[3] The complainant provides a copy of the release bond, dated 24 August 2007.

[4] The complainant provides a medical report from Asoka Medical Centre stating that he was treated for severe pain in the left arm and pain in his chest and abdominal after having been "attacked by anti-gay activists".

[5] The complainant provides a copy of an e-mail from P.O., dated 8 February 2011, containing threats and criticisms of the "selfish culture of sodomy", and copies of a public notice published in a newspaper and of a "wanted" notice with a photograph and the name of the author, indicating that he is one of the most wanted homosexual leaders in a group called Rainbow and is wanted by the Security Agency.

[6] No further details are provided on the allegation.

[7] The complainant provides a letter dated 13 February 2012 from the Rainbow Resource Centre, located in Winnipeg, Canada, stating that his membership card is enclosed. A copy of the card is also provided. The Rainbow Resource Center letterhead states that it serves Manitoba's gay, lesbian, bisexual, transgender, and two-spirit communities.

2.5 The complainant states that from 2008 to 2010, he went to Iraq to work as a security guard.[8] He extended his employment contract there as long as possible because he did not want to go back to Uganda. When his contract ended, he had no choice but to return to Uganda, even though he "really was afraid" to return there as he was likely to be arrested, tortured and killed for being gay.

2.6 The complainant submits that when he returned to Uganda, Parliament was debating the anti-homosexuality bill, which would give the Government the legal right to imprison and torture gays, and to impose more severe punishments on homosexuals and those promoting lesbian, gay, bisexual and transgender rights. The complainant submits that the law also imposed a duty on Ugandan citizens to report within 24 hours any suspected or encountered homosexual activity; failure to report such activity would result in a three-year prison sentence.

2.7 The complainant states that just before the bill was passed into law, he and his family were harassed by their neighbours, and the media was calling for the "genocide of gays" in Uganda. Given the hostile environment, the complainant fled to Canada.[9] He arrived in Canada on 14 October 2010 and filed an application for refugee status on 15 February 2011. The four-month delay occurred because it took him four months to learn about and understand the refugee claim process in Canada. His application was rejected on 19 October 2012. The Refugee Protection Division found that he was not a person in need of protection by Canada. His application to seek leave for a judicial review of that decision was dismissed by the Federal Court of Canada on 20 March 2013.

2.8 The complainant argues that because Canadian law prevents him from filing a pre-removal risk assessment application if fewer than 12 months have passed prior to the denial of his refugee claim, he has been deprived of the opportunity to submit new evidence that is relevant to his asylum case. He presents the following documents as new evidence that he risks torture and death if returned to Uganda: (a) an arrest warrant dated 15 November 2012 issued by the Chief Magistrate's Court in Uganda, which the complainant explains was issued after he had failed to appear in court on 8 November 2012 to answer a charge of "having carnal knowledge against nature"; (b) a court summons from the same court, dated 4 November 2012, stating that the complainant is charged with that same offence; (c) a letter from the Ugandan Police Force, dated 29 October 2012, summoning the complainant to the police station to answer reports from several community leaders that he was promoting homosexuality and recruiting young people for that purpose; (d) a letter issued by Kiwonvu Village Urban Council, dated 28 October 2012, asking the complainant to leave the village; (e) a letter from the complainant's mother, dated 30 November 2012, warning the complainant of the danger he faced;[10] (f) an undated wanted poster bearing the complainant's photograph, which was allegedly put up in his neighbourhood; and (g) an article entitled "Public Notice" from *The Observer* newspaper in Uganda, dated 9 November 2012, bearing the complainant's photograph and stating that he is a homosexual and is wanted by the Security Agency forces.

[8] The complainant indicates that after his arrest, he contacted a friend and obtained a job as a security guard in Iraq. He does not specify how much time elapsed between his arrest and the date he left Uganda.

[9] The complainant does not provide further details on the reasons for or circumstances behind his departure to Canada.

[10] The letter, which is signed "Your mummy Aida [illegible]," states, "Each and every day the security people are searching our house thinking you are hiding in there. I was one day taken and tortured so that I tell them your whereabouts. Even the local community have turned against you, saying that you have joined hands with the whites to spoil their culture by preaching homosexuality".

The complaint

3.1 The complainant submits that Canada would violate his rights under article 3 of the Convention against Torture if it forcibly returned him to Uganda, where he "will certainly be killed and tortured for being gay". He states that he has the basic human right to choose and control his own sexuality and sexual orientation. He states that he is a gay rights activist in Canada, that the Ugandan security forces believe that he is the leader of a group called Rainbow and that, as such, he is at risk of being killed and tortured for being gay. The complainant claims that he also fears that ordinary Ugandan citizens will turn him in to the police once they realize that he is gay.

3.2 The complainant alleges that the decision of the Refugee Protection Division was flawed because it was based solely on the criticism that the documents provided by the complainant were mostly post-dated and provided solely for the purpose of the hearing. The complainant rejects that determination and states that he provided the documents because the instructions for completing the refugee claim required him to prove his claim.

3.3 The complainant asserts that because Canadian law prevents him from filing a pre-removal risk assessment application if fewer than 12 months have passed prior to the denial of his refugee claim, he has been deprived of the opportunity to submit new evidence that is relevant to his asylum case.

3.4 The complainant also alleges that his application for leave and judicial review was unfairly denied in a one-line decision that did not reflect a proper review of the complainant's application.

State party's request for suspension

4.1 On 27 March 2014, the State party requested the Committee to suspend the examination of the complaint until the current domestic proceedings had been concluded. It recalled that the complainant had arrived in Canada on 14 October 2010 and filed an application for refugee protection on 15 February 2011. On 19 October 2012, the complainant had been found not to be a refugee within the terms of the Immigration and Refugee Protection Act and the Convention relating to the Status of Refugees and the Protocol thereto, and not to be a person otherwise in need of protection by the Refugee Protection Division of the Immigration and Refugee Board of Canada. His application to seek leave for a judicial review of that decision had been dismissed by the Federal Court of Canada on 20 March 2013.

4.2 The State party also recalled that Section 112 (2) (b.1) of the Immigration and Refugee Protection Act provides that a claimant cannot apply for an additional risk assessment (a pre-removal risk assessment) if fewer than 12 months have passed since the assessment by the Refugee Protection Division of his or her claim for refugee protection or since a previous pre-removal risk assessment. In the complainant's case, the 12-month period came to an end on 19 October 2013 and on 11 March 2014, the complainant submitted an application for a pre-removal risk assessment. As the application was outstanding, the State party requested the Committee to suspend its consideration of the communication until the assessment had been completed. The State party underlined that the complainant was not subject to removal while his application was outstanding.

4.3 On 23 April 2014, the State party informed the Committee that on 9 April 2014, after evaluating all of the evidence provided and on the basis of detailed reasoning, the specialized risk-assessment officer had found that the complainant had not established that there were substantial grounds to believe that he would be at risk of torture or cruel, inhuman or degrading treatment if he was returned to Uganda. The complainant was informed of that decision on 17 April 2014.

4.4 The State party also informed the Committee that the complainant was entitled to seek leave to apply to the Federal Court for judicial review of the pre-removal risk assessment decision and to seek a judicial stay of removal pending the Court's decision on the leave application. In accordance with paragraph 72 (2) (b) of the Immigration and Refugee Protection Act, an application for leave must be filed in the Federal Court within 15 days after the day on which the applicant is notified of the pre-removal risk assessment decision, or otherwise becomes aware of the matter.

4.5 At the time that the State party submitted its request for suspension, the complainant had not yet applied to the Federal Court for leave to seek judicial review of the pre-removal risk assessment decision. The State party indicated that, in the absence of a Federal Court order for a stay following a negative determination, it could not be assumed that it would continue to defer the removal of the complainant.

State party's observations on admissibility and the merits

5.1 On 26 June and 25 August 2014, the State party requested the Committee to lift interim measures and submitted its observations on admissibility and the merits of the communication. It considered that the Federal Court decision issued on 23 July 2013 denying the complainant's application for leave to seek judicial review of the decision rejecting his pre-removal risk assessment issued on 9 April 2014 "reinforced its position that there was no evidence that the author would face a personal and real risk of torture in Uganda".

5.2 The State party reiterated that the communication was inadmissible on the ground that the complainant had failed to exhaust domestic remedies, as he had not filed a humanitarian and compassionate application.[11] A successful humanitarian and compassionate application would allow the author to remain in Canada as a permanent resident.

5.3 The State party considers that the communication is inadmissible because the complainant has failed to substantiate, even on a prima facie basis, that he faces a real and personal risk of torture in Uganda. The domestic authorities found that the complainant's allegations were not credible or plausible with respect to central aspects of his claim. The State party indicates that the Committee has found that it is not within its scope of review to re-evaluate findings of fact or credibility by domestic decision makers. In particular, the story of the complainant's arrest and detention in 2007 for participating in a pro-gay protest is not credible. There are significant inconsistencies and contradictions in the complainant's evidence and testimony with respect to that element of the story. For instance, the complainant stated before the Refugee Protection Division that he was not able to remember the exact date of his participation in the demonstration; he speculated that it should have been about three days before 17 August 2007. However, he could not prove that the demonstration took place a few days before that date. Furthermore, the release bond submitted by the complainant is dated 24 August 2007, a week after the day he claimed in his testimony before the Refugee Protection Division that he had been released, that is, 17 August 2007. There is also no mention of the complainant's arrest and detention in R.M.'s letter, despite the fact that, according to the complainant's testimony, R.M. assisted him after he was released by the police. There is no corroborative proof supporting the

[11] In its submission dated 26 June 2014, the State party also considered that the communication was inadmissible on the basis of non-exhaustion of domestic remedies owing to a pending pre-removal risk assessment. However, in its submission dated 26 August 2014, the State party withdrew that argument and informed the Committee that the complainant's pre-removal risk assessment had been denied.

complainant's claim that he was arrested, detained and tortured by the Ugandan authorities in August 2007. To support that affirmation, the complainant provided only a medical report, which was illegible, and the above-mentioned release bond. Moreover, the Refugee Protection Division official found that the medical report indicated that the complainant was attacked by anti-gay protestors, not by the police. In addition, the State party argues that the complainant did not submit any recent documents to substantiate his allegation that he is currently at risk of being arrested and tortured by the Ugandan authorities. The most recent documents he submitted are dated within a month of the decision rejecting his claim for refugee protection in October 2012. The complainant did not provide even a recent letter from his family or from friends living in Uganda to attest to a real and future risk.

5.4 Regarding the new documentation submitted by the complainant before the Committee (see para. 2.8 above), the State party notes that the same documentation was also submitted in the pre-removal risk assessment application dated 11 March 2014, and was considered by the domestic authorities. The assessment officer found that those documents should be given little weight because they were copies rather than originals, contained critical typographical errors and were all dated within one month of the complainant's receipt of his negative Refugee Protection Division decision on 19 October 2012. The complainant did not submit any more recent documents either in his pre-removal risk assessment application or to the Committee.

5.5 The State party submits that it is not plausible that the Ugandan authorities would be more interested in the complainant now than when he was still living in Uganda, and that if they were really concerned about him, they would not have released him after only a few days of detention in 2007, and would not have allowed him to leave the country in 2008. The complainant has not explained why the Ugandan authorities suddenly started actively looking for him at the end of October 2012, two years after he had left the country and five years after he was allegedly arrested and released by the police in Kampala. The State party considers that it is simply not believable that the Ugandan authorities would continue to have an interest in him some five years after his initial arrest and release. Moreover, the complainant waited four months to make his claim for protection in Canada, a delay which is not compatible with a genuine fear of serious harm in another country.

5.6 The State party refers to the significant discrepancies between the story told by the complainant at his port of entry interview and his testimony at the Refugee Protection Division hearing and on his personal information form. For instance, in the interview at the port of entry, the complainant explained that his wife had left him because he had no money. However, on his form and at the hearing, the complainant explained that his wife left him when she became aware of his homosexuality. Moreover, in his port of entry interview, the complainant claimed that a newspaper had published pictures of him and other gay individuals in Kampala. However, when questioned at the hearing as to why he had not disclosed the pictures to the Division, he claimed that his picture was not published in the newspaper, and he could not offer any credible explanation as to why he had said so at the interview.

5.7 The State party considers that, while the situation of lesbian, gay, bisexual, transgender and intersex persons in Uganda is problematic and has worsened as a result of the new Anti-Homosexuality Act, although there have been arrests in the past under section 145 of the Penal Code for homosexual acts in Uganda, thus far, there have been no reported cases of conviction or prosecution under the new Law.[12] The State party submits that the

[12] The State party cites the United States Department of State, "Uganda 2013 Human Rights Report", available at www.state.gov/documents/organization/220383.pdf, and Human Rights Watch, *Uganda: Anti-Homosexuality Act's Heavy Toll*, available at www.hrw.org/news/2014/05/14/uganda-anti-

criminalization of homosexuality alone is an insufficient ground for a finding of a personal risk of torture. The State party refers to the Committee's jurisprudence in *K.S.Y. v. The Netherlands*, in which it found that the return of an individual claiming to be homosexual to Iran would not violate article 3 of the Convention, noting "a number of contradictions and inconsistencies in his account of past abuses at the hands of the Iranian authorities, as well as the fact that part of his account has not been adequately substantiated or lacks credibility".[13] The State party distinguishes the complainant's circumstances from those of the complainant in *Mondal v. Sweden*, in which the Committee considered that the return to Bangladesh of an individual alleging to be homosexual would constitute a breach of article 3 of the Convention, because a death fatwa had been issued against him and he had provided credible evidence of past persecution and pursuit by the police.[14] The general situation of human rights in Uganda is insufficient by itself to substantiate the complainant's allegations that he would personally be at risk if returned there.

5.8 The State party concludes that the application is unfounded and requests the Rapporteur for new complaints and interim measures to lift the interim measures.

Complainant's comments on the State party's observations on admissibility and the merits

6.1 In his comments dated 22 September 2014, the complainant contests the State party's assertion that he has not exhausted domestic remedies. He asserts that he was ineligible to file a humanitarian and compassionate application for a one-year period after 19 October 2012, and that his deportation was scheduled for 7 October 2013, before the one-year period expired. He maintains that he is still ineligible to file a humanitarian and compassionate application because the first step of the humanitarian and compassionate application process, which lasts 28 months, does not allow for a stay of removal. Moreover, he maintains that under the State party's current legislation, the Canadian Immigration authorities are unable to take into consideration the risk at which he would be if returned to Uganda based on the fact that he is gay and that he is wanted by the Ugandan authorities. He therefore maintains that his application under humanitarian and compassionate grounds would most certainly be rejected.[15]

6.2 In additional comments dated 3 October 2014, the complainant expresses his disagreement with the State party's comment that the decision of the Federal Court reinforces its position that there is no evidence that the complainant would face a personal and real risk of torture in Uganda. He refers to the Committee's jurisprudence according to which (a) judicial review of a negative refugee protection decision or the pre-removal risk assessment do not provide an effective remedy; and (b) "the State party should provide for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk

homosexuality-acts-heavy-toll.

[13] See communication No. 190/2001, *K.S.Y. v. The Netherlands*, decision adopted on 15 May 2003, para. 7.3.

[14] See communication No. 338/2008, *Mondal v. Sweden*, decision adopted on 23 May 2011.

[15] The author refers to the Citizenship and Immigration Canada website, which under the section entitled "Limitation on assessment of risk in an in-Canada Application", indicates that "Section 25(1.3) of IRPA states: '... the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under Section 96 or a person in need of protection under Subsection 97(1) but must consider elements related to the hardships that affect the foreign national'. This means that you must consider all the evidence using the hardship test but you do not conduct a risk assessment such as would be done by the IRB or in a Pre-removal risk assessment". Available at www.cic.gc.ca/english/resources/tools/perm/hc/processing/hardship.asp.

of torture".[16] The complainant argues that the Federal Court did not assess his case on its merits, refused to hear him, and that the same Federal Court judge rejected his judicial review application without giving any reasons in March 2013 and August 2014.

State party's additional observations

7.1 In a submission dated 7 November 2014, the State party reiterates that the Federal Court's decision denying leave reinforces its position that there is no evidence that the author would face a personal and real risk of torture in Uganda, and that the author's claim is inadmissible on the ground of non-exhaustion of domestic remedies because he failed to apply for permanent residence on the basis of humanitarian and compassionate considerations.

7.2 The State party argues that a humanitarian and compassionate application consists of a broad, discretionary review by an officer to determine whether a person should be granted permanent residency in Canada for humanitarian and compassionate reasons. The test is whether the applicant would suffer unusual, undeserved or disproportionate hardship if he or she had to apply for a permanent resident visa from outside Canada, "according to the general rule". The assessing officer considers all the relevant evidence and information, including the applicant's written submissions.

7.3 Until 2010, the humanitarian and compassionate consideration also included a risk component. Following the legislative reform of the refugee and protection system in 2012, humanitarian and compassionate applications are no longer based on risks assessed within the refugee determination or pre-removal risk assessment processes, such as the risk of torture. Nevertheless, hardship potentially faced by the applicants in their country of origin remains a relevant consideration. Examples of such hardship include a lack of critical medical or health care and adverse country conditions that have a direct, negative impact on the applicant, such as war, natural disasters, unfair treatment of minorities, political instability, lack of employment and widespread violence.[17] Decisions on humanitarian and compassionate applications are also reviewable, with leave, on judicial review by the Federal Court of Canada.

7.4 The State party indicates that, subject to certain exceptions, applicants must wait twelve months from their last negative decision from the Immigration and Refugee Protection Board before submitting a humanitarian and compassionate application. In the present case, the Refugee Protection Division of the Immigration and Refugee Protection Board determined that the author was not a Convention refugee by a decision dated 19 October 2012. Therefore, the complainant has been able to apply for permanent residence on humanitarian and compassionate grounds since 19 October 2013. If the complainant were to apply for and be granted permanent residence on that basis, his complaint before the Committee would be rendered moot as the author would be able to remain in Canada. The State party refers to the jurisprudence of the Committee in *P.S.S. v. Canada*, according to which the possibility of making an application for permanent residence on humanitarian and compassionate grounds was identified among the domestic remedies available to bring effective relief to the complainant, and where the Committee consequently found that the communication was inadmissible for failure to exhaust domestic remedies.[18]

[16] The author refers to communication No. 319/2007, *Singh v. Canada*, decision adopted on 30 May 2011, para. 8.9.

[17] The State party refers to "The humanitarian and compassionate assessment: Hardship and the H&C assessment". Available at www.cic.gc.ca/english/resources/tools/perm/hc/processing/hardship.asp.

[18] See communication No. 66/1997, *P.S.S. v. Canada*, decision of inadmissibility adopted on 13 November 1998, para. 6.2.

7.5 The State party concludes that the communication should be held inadmissible or, should the Committee consider any part of the communication admissible, that it is wholly without merit.

Complainant's comments on the State party's additional observations

8.1 In his additional comments on the State party's observations, dated 29 January 2015, the complainant reiterates the arguments presented in his previous submissions and refers to the Committee's jurisprudence according to which humanitarian and compassionate applications are not remedies that must be exhausted for the purpose of admissibility.[19]

8.2 The author argues that the earliest date on which he could have filed a humanitarian and compassionate application was after the date of his deportation to Uganda, which would have prevented him from applying. He adds that the humanitarian and compassionate application is a two-step process, and that the first step takes approximately 28 months, during which there is no stay of removal.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 The Committee notes that the complainant's application for leave seeking judicial review of the pre-removal risk assessment, issued on 9 April 2014, was rejected by the Federal Court on 23 July 2014. The Committee also notes that, after the Federal Court issued its decision, the State party decided to withdraw the claim of inadmissibility that it had made on the ground that the pre-removal risk assessment was pending review by the Federal Court. The Committee further notes the State party's argument that the complainant failed to apply for permanent residence on the basis of humanitarian and compassionate considerations, and that his complaint is therefore inadmissible for failure to exhaust domestic remedies. With regard to the State party's observations concerning the effectiveness of that remedy, the Committee recalls its jurisprudence according to which, although the right to assistance on humanitarian grounds may be a remedy under the law, such assistance is granted by a minister on purely humanitarian grounds, rather than on a legal basis, and is thus ex gratia in nature. The Committee has also observed that when an application for judicial review is approved, the Federal Court returns the file to the body that took the original decision or to another decision-making body and does not itself conduct the review of the case or hand down any decision.[20] Rather, the decision depends on the discretionary authority of a minister and, thus, of the executive. Based on those considerations, the Committee concludes that, in the present case, the possible failure to exhaust that remedy does not constitute an obstacle to the admissibility of the complaint.[21]

9.3 The State party submits that the complaint is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues that should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible.

[19] The author refers to communications No. 343/2008, *Kalonso v. Canada*, decision adopted on 18 May 2012, para. 8.3; and No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010, para. 6.3.

[20] See communication No. 333/2007, *T.I. v. Canada*, para. 6.3.

[21] See communication No. 343/2008, *Kalonso v. Canada*, para. 8.3.

Consideration of the merits

10.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

10.2 The issue before the Committee is whether the expulsion of the complainant to Uganda would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to Uganda.[22] In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subject to torture in his or her specific circumstances.[23]

10.3 In the present case, the Committee notes the argument of the State party that the complainant has failed to substantiate that he faces a real and personal risk of torture in Uganda. The Committee also notes the State party's argument that the complainant's allegations were not credible regarding central aspects of his claim related to the risks he would be exposed to if returned to Uganda owing to his sexual orientation, including his allegations related to his arrest and torture inflicted in 2007, as well as the allegations related to the recent interest shown by the Ugandan authorities regarding his whereabouts in relation to the charges brought against him for "having carnal knowledge against nature". The Committee notes the complainant's argument that the Canadian authorities did not give sufficient consideration to or properly analyse his claims, including the new pieces of evidence related to the criminal procedures against him based on charges related to his sexual orientation.

10.4 The Committee recalls its jurisprudence that complete accuracy is seldom to be expected from victims of torture.[24] The Committee finds it impossible to verify the authenticity of some of the documents provided by the complainant. However, in view of the reliable documentation he has provided, including a supporting letter from the Uganda Human Rights Commission, the Local Council of Kafero Zone, an attestation from the Gay and Lesbian Association in Uganda and a medical report, the Committee considers that the complainant has provided sufficient reliable information for the burden of proof to shift.[25]

10.5 The Committee notes that the State party has acknowledged that the situation of lesbian, gay, bisexual, transgender and intersex persons in Uganda is problematic and that it worsened after the Anti-Homosexuality Act was adopted. The Committee also notes that, despite the fact that the Anti-Homosexuality Act was nullified by the Constitutional Court

[22] See, for example, communications No. 61/1996, *X, Y and Z v. Sweden*, decision adopted on 6 May 1998, para. 11.2; and No. 435/2010, *G.B.M. v. Sweden*, decision of 14 November 2012, para. 7.7.

[23] See communications No. 426/2010, *R.D. v. Switzerland*, decision adopted on 8 November 2013, para. 9.2; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010, para. 7.2; and No. 333/2007, *T.I. v. Canada*, para. 7.3.

[24] See communications No. 416/2010, *Ke Chun Rong v. Australia*, decision adopted on 5 November 2012, para. 7.5; and No. 21/1995 *Alan v. Switzerland*, decision adopted on 8 May 1996, para. 11.3.

[25] See communication No. 185/2001, *Karoui v. Sweden*, decision adopted on 8 May 2002, para. 10.

in August 2014, the Court based its decision on a procedural issue (the law was adopted without the necessary quorum) and the Act can be brought before the Parliament again at any time. The Committee further notes that, according to publicly available information, after the adoption of the Act, there was an increase in the number of cases of arbitrary arrest, police extortion, eviction and attacks on the reputation of lesbian, gay, bisexual, transgender and intersex persons and in the number who became homeless.[26] Furthermore, the Committee notes that there are reports indicating that some lesbian, gay, bisexual, transgender and intersex persons have been beaten and groped by police and detainees while in custody.[27] The Committee therefore considers that the author may be at risk of torture or ill-treatment if he is returned to Uganda, taking into account not only his sexual orientation, but also his militancy in lesbian, gay, bisexual, transgender and intersex organizations and the fact that he could be detained pursuant to the criminal charges brought against him (see para. 2.8 above).[28]

10.6 Accordingly, the Committee finds that, taking into account all the factors in the present case, substantial grounds exist for believing that the complainant will be in danger of torture or ill-treatment if returned to Uganda.

11. In the light of the above, the Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Uganda by the State party would constitute a breach of article 3 of the Convention.

12. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Uganda or to any other country where he runs a real risk of being expelled or returned to Uganda. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

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[26] Human Rights Watch, "Is it now legal to be gay in Uganda?", 7 August 2014, available at www.hrw.org/news/2014/08/07/it-now-legal-be-gay-uganda. Several documented cases of violence and harassment against the lesbian, gay, bisexual, transgender and intersex community that may be attributable to the Ugandan security forces have also been reported. See Human Rights First, "Communities under siege: LGTBI Rights Abuses in Uganda", available at www.humanrightsfirst.org/wp-content/uploads/Discrimination-against-LGBTI-Ugandans-FINAL.pdf.

[27] See www.amnesty.org/en/latest/news/2014/10/uganda-discriminatory-legislation-fuels-repression-and-abuse/. Moreover, reportedly "some police officers would use mostly psychological torture, while others would encourage inmates to physically abuse the LGBT person. Physical abuse is often perpetrated by inmates, but also by police officers". See Home Office of the United Kingdom of Great Britain and Northern Ireland, "Country Information and Guidance. Uganda: Sexual Orientation and Gender Identity", August 2014, available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/346274/CIG_Uganda_SOGI_2014_8_20_v2_0.pdf.

[28] According to Chapter Four, a Ugandan lesbian, gay, bisexual, transgender and intersex organization, lesbian, gay, bisexual, transgender and intersex persons in Uganda face abuse from the criminal justice system itself, including the "practice of anal/rectum examination, a routine practice in the investigation of cases against LGBTI persons, usually conducted in the presence of third parties and in unscientific manner … 'The method is unscientific and of no evidentiary value in criminal prosecutions and amounts to torture, cruel, inhumane and degrading practice'". See http://chapterfouruganda.com/articles/2015/04/14/uganda-where-do-we-go-justice-abuse-rights-sexual-minorities-uganda%E2%80%99s-criminal.